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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AF22

Small Business Size Standards; Selected Size Standards Issues

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking (ANPRM) seeks comments from the public on several issues that were raised during the public comment period of the U.S. Small Business Administration's (SBA or Agency) recently withdrawn proposal to restructure its small business size standards. The issues discussed in this ANPRM address matters pertaining to SBA's size standards but were not part of the March 19, 2004, proposed changes. To assist SBA with examining how best to restructure and simplify its size standards, the Agency invites comments on these issues to take into consideration in any future proposal. This ANPRM also seeks comments on an issue concerning the participation of businesses that are majority-owned by venture capital companies in the Small Business Innovation Research (SBIR) Program. Specifically, the SBA is seeking comments on whether it should provide an exclusion from affiliation with venture capital companies in determining small business eligibility for the SBIR Program.

DATES: Comments must be received on or before February 1, 2005.

ADDRESSES: You may submit comments, identified by RIN 3245-ZA02 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: restructure.sizestandards@sba.gov. Include RIN 3245-ZA02 in the subject line of the message.
- Fax: (202) 205-6930.

- Mail: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Washington, DC 20416.

- Hand Delivery/Courier: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Washington, DC 20416.

Upon receipt of a written request under the Freedom of Information Act, SBA will make available all public comments received.

FOR FURTHER INFORMATION CONTACT: SBA's Office of Size Standards at (202) 205-6618 or at sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION: On March 19, 2004, SBA published a proposed rule to restructure its small business size standards by establishing them based primarily on the number of employees of a business concern and by limiting to 10 the number of different size standard levels (69 FR 13130). SBA believed this would simplify the existing structure of size standards and enable the public to better understand and use them. The proposed rule also included changes to several specific program-related and specialized size standards as an effort to reduce the overall variation of size standards.

The SBA received more than 4,500 comments on the proposed changes, with a majority of the comments expressing support for the proposal. More than 2,300 comments that supported the proposal agreed with the position advanced by one organization by submitting an identical comment, which focused primarily on the proposal to revise the 500 employee size standard for nonmanufacturers to 100 employees. Of the remaining comments, most of them objected to the proposed size standards. These opposing comments raised concerns about SBA's methodology for converting receipts-based size standards to employee-based size standards and their resulting levels, the number of potential businesses losing small business status, the thoroughness of SBA's regulatory flexibility analysis of the proposed changes, the determination of the employee size of a business, and SBA's overall approach to simplifying size standards. As a result of the concerns expressed by a large number of comments, SBA withdrew the proposal on July 1, 2004 (69 FR 39874).

SBA remains committed to modifying its size standards in a manner to make

them simpler and easier to use. SBA seeks input from the public on several issues on which it believes additional comment would be helpful before deciding the next course of action. These issues concern various aspects of size standards that have implications on the restructuring proposal but were not part of the changes in the March 19, 2004, proposed rule. Specifically, these issues pertain to the approach to simplify size standards, the calculation of number of employees (including how SBA defines an employee for size purposes), the use of receipts-based size standards, the designation of size standards for Federal procurements, the establishment of size standards for use solely in Federal procurement programs, the establishment of tiered size standards, the simplification of affiliation regulations, the simplification of the small business joint venture eligibility regulations, the grandfathering of small business eligibility, and the impact of SBA size standards on the regulations of other Federal agencies.

SBA is planning other actions on size standards in addition to this ANPRM. First, SBA plans to hold a series of public meetings on size standards. These meetings will focus on the issues raised in this ANPRM. Second, SBA is examining a number of specific size standards as separate rulemaking actions, such as the nonmanufacturer size standard which received a large number of comments supporting a reduction to the size standard.

This ANPRM also seeks comments on an issue concerning the participation of businesses majority-owned by venture capital companies in the SBIR Program. Under SBA's affiliation regulations, a business concern that is majority-owned by a company must include the size of the company and all of its affiliates in determining small business status for the SBIR Program and for most other programs. SBA seeks public comments on whether it should provide an exclusion from affiliation with venture capital companies in determining small business eligibility for the SBIR Program, assuming such companies met the other eligibility criteria for the program.

Approaches to simplification of size standards. As discussed above, SBA proposed to restructure its size standards as a way to simplify and make

them easier to use. The March 19, 2004, proposal would have accomplished this by primarily modifying the structure of size standards. Many of the comments agreed with this approach. However, many other comments contended that the current structure is not complicated or difficult to understand, and that the proposal would in fact make size standards more complicated.

Over the years, SBA's size standards on occasion have been criticized as being difficult to understand. Many of these complaints relate to issues regarding the application of size standards, not to the size standards themselves. This ANPRM provides the public with an opportunity to advise SBA on what areas of size standards make them complicated or difficult to use or understand. SBA's March 19, 2004, proposal to simplify the structure of size standard is an approach to address one aspect of size standards. SBA is interested in whether this approach achieves simplification or if other approaches should be examined that address other aspects of size standards. Comments on this issue should explain how a particular aspect of size standards is complicated, and what modifications could be made to improve upon existing policies. The comments should also describe the benefits to small businesses and the users of size standards if such modifications were adopted.

Calculation of number of employees. The March 19, 2004, proposed rule expanded the use of employee-based size standards to industries that have traditionally used receipt-based size standards, such as the Construction, Retail Trade, and the Services Sectors. SBA did not propose to change its method for counting number of employees. Under the Small Business Size Regulations, 13 CFR 121.106, SBA calculates number of employees in the following manner:

Section 121.106 How Does SBA Calculate Number of Employees?

(a) In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) Where the size standard is number of employees, the method for determining a concern's size includes the following principles:

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

(2) Part-time and temporary employees are counted the same as full-time employees.

(3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(4)(i) The average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the business concern with the average number of employees of each affiliate. If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose. (ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

Many comments recommended that SBA modify its method for calculating the number of employees of a business concern. These comments pointed out that under SBA's current method, businesses that utilize part-time employees, temporary employees, or lower-paid employees would tend to outgrow an employee-based size standard quicker than a similar business that primarily utilized full-time employees. Calculating employment size on a full-time equivalent (FTE) basis was often mentioned as an alternative. Calculating part-time employees in a different manner from full-time employees in determining the overall employment size of a business was also suggested. Comments on this issue also raised concerns regarding the treatment of independent contractors in determining employment size.

SBA seeks comments on alternative methods of calculating the employment size of a business concern and, in particular, the feasibility of using FTEs.

The comments should clearly describe the alternative calculation method and why it would be preferable to SBA's current calculation of number of employees. Comments recommending an alternative calculation should also address the implications on the types of businesses that could be affected in terms of small business eligibility.

Related to this issue is whether the time period for calculating average employment should be modified from SBA's current method, which uses a rolling average of the pay periods over the preceding 12 months. For example, should average employment be based on a fixed period of time, such as a calendar year? Also, should average employment be based on a longer period than one year? Comments should describe the alternative time period and explain why it would be an improvement to the current averaging calculation.

If SBA chooses to modify its calculation of number of employees, the method must be one that allows businesses to provide supporting documents to the SBA, in the event of a size protest, in a verifiable manner and one that would not create an excessive administrative burden. Many comments on the use of employee-based size standards contended that calculating and reporting to SBA their business' employment size is administratively burdensome. However, other comments pointed out that automated payroll and accounting systems enable businesses to readily document their employment size. SBA is particularly interested in comments that described the process small businesses must follow to calculate average employment and whether producing this information creates an unacceptable burden. Alternative methods of calculating average employment should address the implications on the alternative calculation on administrative burdens.

Use of receipts-based size standards. SBA received a number of comments recommending that it continue to use receipts-based size standards. These comments generally provided one of three reasons for their position. First, receipts are considered a more appropriate measure of business size for their industry than number of employees. Second, average annual receipts are simpler than number of employees for businesses when determining their small business status and less burdensome in providing documentation to SBA in the event of a size protest. (SBA evaluates the average annual receipts size of a business based on the Federal tax returns submitted by the business to the Internal Revenue

Service (13 CFR 121.104)). Third, the use of employee-based size standards could encourage businesses to reduce employment, use fewer part-time and lower-paid employees, convert employees to independent contractors, subcontract more work to other businesses, and make other employment related decisions that they would not otherwise adopt.

SBA seeks comments on whether it should continue to use receipts-based size standards or establish size standards based exclusively on number of employees. SBA in particular seeks comments on what considerations it should give when deciding whether an industry size standard should be based on average annual receipts or number of employees. Also, for what industries are receipts-based size standards more appropriate than employee-based size standards, and in what ways are they more appropriate? Comments on this issue should address if having one measure of size for some industries and a different measure for other industries creates an unnecessary complication to size standards.

Designation of size standards for Federal procurements. The size standard designated for a Federal procurement is determined by the North American Industry Classification System (NAICS) industry that best describes the principle purpose of the procurement (see 13 CFR 121.402). This decision is the responsibility of the contracting officer. Once the NAICS industry is designated, the size standard established by SBA is assigned to the procurement solicitation. Some comments pointed to this process as an area that makes size standards complicated. Because size standards vary by industry, businesses and contracting officers have at times argued for an incorrect NAICS designation so as to effect the small business eligibility of certain businesses. Other comments pointed out that Federal procurements that require a contractor to perform a significant amount of activities from several different industries are more difficult to designate a single NAICS industry than for procurements which primarily consists of activities of one NAICS industry. Furthermore, varying size standards by NAICS industry results in some businesses that operate in multiple industries being considered small for some Federal procurements but not for other types of procurements.

SBA seeks comments on whether the process for applying size standards to Federal procurements should be modified. If so, the comments should describe an alternative system and how it would improve upon the current

process. Comments should also address how the alternative process would ensure that small businesses fairly compete with other businesses that are small in that field of work.

Establishment of size standards solely for Federal procurement. SBA received comments arguing that it should significantly increase size standards to assist small businesses in developing a sufficient infrastructure that will allow them to compete for Federal procurements in full and open competition against the leading Federal contractors. These comments contended that the requirements and growing size of Federal contracts create a situation in which a small business that is awarded one or two Federal contracts automatically outgrows the size standard and loses its eligibility to compete for future contracts requiring small business status. These comments further contended that businesses that are not small or among the largest Federal contractors enter a "dead zone" or "limbo zone" where they must compete for future Federal contracting opportunities against corporate giants before they have developed a competitive strength to do so.

In 1984, SBA adopted a policy that its industry size standards would apply to all programs. Before then, SBA had one set of size standards for Federal procurement and one set for all other small business programs. SBA is concerned that a significant increase in the size standards to reflect trends in Federal procurement would create size standards that are too high to realistically reflect small businesses in an industry or for the purposes of most other Federal small business programs.

SBA seeks comments on whether a separate set of size standards should be established specifically for Federal procurement or whether this would needlessly complicate size standards. These comments should address the public policy justification for establishing such a separate set of size standards. That is, why should a small business be eligible for one program but not be eligible for another small business program? If separate Federal procurement size standards were established, what factors should SBA take into consideration in developing the size standards that are different from SBA's current industry analysis methodology (see SBA's size standards Web page for proposed rules that describe the industry analysis at <http://www.sba.gov/size>)? Also, please address whether separate Federal procurement size standards that are higher than the current size standards would adversely affect the assistance to

a particular segment of small businesses extending assistance to relatively successful larger small and mid-sized businesses.

Establishment of tiered size standards. A number of comments suggested that SBA establish size standards to direct assistance to different sizes of small businesses. That is, SBA should establish size standards for sub-categories of small businesses, such as a very small business. These comments generally argued that two levels of size standards are needed to assist small businesses in developing into competitive businesses capable of being successful on Federal procurements competed on a full and open basis. These comments recognized that higher size standards may adversely affect the competitiveness of small businesses much smaller than the size standard. Many of these comments tied the establishment of tiered size standards with the estimated dollar value of a Federal procurement. That is, lower dollar value procurements could be reserved for very small businesses while other procurements could continue to be available to all small businesses.

Two programs have provided for special treatment of sub-categories of small businesses. Both of these programs were authorized by legislation. Under the Small Business Competitiveness Demonstration Program (Pub. L. 100-656, the Small Business Competitiveness Demonstration Program of 1988, as amended), procurements of \$25,000 or less are reserved for emerging small businesses, defined as businesses one-half of the applicable size standards. This program applies to Federal procurements in four designated industry categories (construction, refuse systems, non-nuclear ship repair, and architectural and engineering services) issued by 10 participating agencies (64 FR 29693, dated June 2, 1999). Until recently, the SBA also had a Very Small Business (VBS) Program.¹ For purposes of that Program, a very small business was defined as one with 15 employees and \$1 million or less in average annual receipts (13 CFR 125.7). The Program authorized Federal agencies in 10 geographic locations to reserve procurements of \$2,500 and \$50,000 for very small businesses. A legislative

¹ The VSB Program was a pilot program authorized under Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403). This pilot program was extended to September 30, 2003, by the Small Business Reauthorization Act of 2000, and further extended through June 4, 2004, by Public Law 108-217, 118 Stat. 591.

provision also established a business category termed smaller enterprise for purposes of the Small Business Investment Company (SBIC) Program (Pub. L. 104-205, 110 Stat. 3009-740). A smaller enterprise is defined as a business with \$6 million or less in net worth and \$2 million or less in net income (13 CFR 107.710). Under the SBIC Program, a small business investment company's portfolio must include a certain proportion of its financings to smaller enterprises.

Although legislative authority would be necessary before SBA could consider establishing tiered size standards, it seeks comments on whether the concept of tiered size standards addresses a compelling need to assist certain segments of small businesses with meaningful Federal contracting opportunities. If tiered size standards have potential to better assist small businesses with Federal contracting opportunities, how could such a system be structured? Because tiered size standards would create more complexity in Federal contracting, what are implications of a small business subcategory on other designated business types (8(a), HUBZone, service-disabled veteran owned small business, women-owned small business, *etc.*) in terms of assistance to those businesses?

Simplification of small business status and affiliation with other businesses. A key provision of SBA's size standards is the consideration of affiliation with other businesses in determining the size of a business. This fundamental concept ensures that Federal small business assistance programs are limited to small businesses that, because of their size, possess inherent disadvantages that larger businesses do not experience.

SBA's general principles of affiliation provide that concerns are affiliates of one another when one concern controls or has the power to control the other, or a third party (or parties) controls or has the power to control both. The power to control need not be exercised; it need only be present. More than 50% ownership of a concern by another will always create affiliation (with certain exceptions, summarized in the next paragraph). Affiliation may also exist if there is less than 50% ownership of a concern by another. In these situations, SBA will also consider factors such as management, previous relationships, shared business or economic interests, economic dependence, convertible debentures, agreements to merge, *etc.*, in determining when affiliation exists in a given situation. The regulations have been developed over many years to provide guidance to the public on how

SBA evaluates affiliation. Because relationships among business concerns can be extremely complicated and at times difficult to fully discover, the affiliation regulations are more extensive than other size regulations.

SBA invites comments addressing ways to clarify its affiliation regulations. SBA is not considering altering its principles of affiliation. Rather, it seeks suggestions that have the potential of improving the language of the affiliation regulations to make them easier for the public to understand. Comments on affiliation should explain how a current regulatory provision is unclear and suggest revised language.

The SBA does seek comments on one specific area of affiliation involving the small business eligibility of franchisees. SBA has received requests from the Temporary Staffing Franchise industry to allow for an exemption from its franchise affiliation regulations. The SBA is considering excluding certain practices of temporary franchisors as conditions for finding affiliation. The practices are (1) the franchisor being the employer of the individuals placed as temporary workers by a franchisee, (2) the franchisor being responsible for the franchisee's payroll and associated costs, (3) the franchisor collecting the franchisee's accounts receivable, and (4) the franchisor remitting client fees to their franchisees. Before developing a proposed rule, SBA seeks comments from businesses in the temporary staffing industry, including those independent staffing firms that are not involved in franchise agreements. SBA is interested in knowing how a change in its affiliation rule for franchisees would affect the temporary staffing industry, in particular:

- Do SBA's current franchise regulations hamper the ability of franchisees to compete in the temporary staffing industry?
- Would allowing this exemption continue to allow for temporary staffing franchisees to be "independently owned and operated" businesses?
- Does allowing this exemption give franchisors too much control over their franchisees?
- Would allowing this exemption give franchisors and franchisees a competitive advantage in contracting over independent temporary staffing businesses?

Joint ventures and small business eligibility. SBA's size regulations have specific provisions determining the small business eligibility of joint ventures. In general, a joint venture of two or more businesses may qualify as an eligible small business if the aggregate size of all the members does

not exceed the applicable size standard (13 CFR 121.103(f)). For certain larger Federal procurements, a joint venture whose members individually qualify as a small business may qualify as an eligible small business joint venture. On May 21, 2004, SBA adopted a change to this provision that allows a joint venture to compete for multiple opportunities (69 FR 29192). However, an ongoing joint venture is limited to submitting offers on three procurement opportunities over a 2 year period. SBA believes that joint ventures among small businesses facilitate opportunities for small businesses to compete for larger-sized Federal procurements.

SBA is seeking additional comment on its joint venture eligibility criteria. Comments addressing the nature of joint ventures formed by small businesses to compete on Federal procurements, the duration of such joint ventures, their competitive strength against other small businesses, and other aspects of joint ventures that have a bearing on policies to assist small business opportunities are also encouraged. SBA is specifically interested in obtaining comments on the recent policy of limiting a small business joint venture to three offerings over a 2 year period. SBA is concerned about permitting a joint venture among the same small businesses to operate as an on-going concern competing against other small businesses. At the same time, this new policy may be too restrictive in today's Federal contracting environment.

Grandfathering of currently eligible small businesses. As mentioned above, one of the concerns with the March 19, 2004, proposed rule was the potential impact on small business that might lose small business eligibility as a result of the restructuring of size standards. Many of these comments pointed out that businesses develop their business plans over the next several years premised on the existing regulations. Abrupt changes that take away small business eligibility significantly disrupt these business plans and force businesses to reassess the viability of their strategies.

SBA expects that any new proposed rule to address the current structure of size standards will have significantly less impact on current small business eligibility than the March 19, 2004, proposal. However, any worthwhile changes will invariably have an adverse impact on a few small businesses. SBA seeks comments on approaches by which to grandfather small businesses that could be adversely impacted by a future restructuring. A related alternative may consist of a longer implementation date than the typical 30

day period to allow businesses to adjust to the new regulations. SBA realizes that it may be difficult to provide comments without a specific proposal. However, SBA seeks general ideas on the approaches and relevant factors it considers if a provision to maintain small business eligibility becomes necessary for a particular proposal.

Impact of SBA size standards on the regulations of other Federal Agencies. An area of concern expressed by the comments pertained to SBA's analysis of the impact of the March 19, 2004, proposed changes. Under the Regulatory Flexibility Act (5 U.S.C. 601–612), Federal agencies must assess whether their regulatory changes will significantly impact a substantial number of small entities. In reviewing these comments, SBA believes it has sufficient information by which to fully analyze most of the concerns raised by these comments.

However, one area that is more difficult to examine involves the impact of SBA's size standards on the programs and regulations of other Federal agencies. SBA is aware of the use of its size standards in a number of Federal regulations and is in the process of identifying others. To ensure that future proposals adequately identify and assess the use of SBA's size standards, SBA is requesting assistance in identifying Federal regulations and programs that utilize its size standards. In addition, SBA welcomes comments describing the impact that a size standard change may have on small entities being subject to different regulatory requirements or their eligibility for Federal benefits. Comments on how size standard changes may effect a Federal agency's ability to meet the purposes of the regulation will also be helpful.

Participation of Businesses Majority-Owned by Venture Capital Companies in the SBIR Program

The U.S. Small Business Administration (SBA) seeks public comments on whether it should provide an exclusion from affiliation for venture capital companies (VCC) in size determinations for eligibility for the SBIR Program. Under such a policy, VCCs that invest in SBIR participants would not be considered affiliates of the SBIR participant and their size would therefore not be included in determining the size of the participant.

On June 4, 2003, SBA proposed in the **Federal Register**, 68 FR 33412, to modify § 121.702 of its Small Business Size Regulations (13 CFR part 121) to allow a small business that is owned and controlled by another business concern to be eligible for funding

agreements under the SBIR Program. The size standard for the SBIR Program requires that an eligible small business concern, with its affiliates, have no more than 500 employees. The proposed rule did not propose to change this 500 employee size standard for the SBIR Program. The rule proposed only to modify the small business eligibility requirements so that the SBIR awardee must meet one of the two following additional criteria: (1) It must either be a for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States (as the regulations currently require); or (2) it must be a for-profit business concern that is 100% owned and controlled by another for-profit business concern that is itself at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. Comments on the proposed rule were due to SBA by July 7, 2003. SBA received 164 comments to the proposed rule. SBA has not yet issued its final rule, but expects to do so in the very near future.

Sixty commenters addressed an issue related to VCCs that was not a subject of the proposed rule. Forty commenters stated that a concern should be allowed to participate in the SBIR Program if one or more VCCs have majority ownership or control of the concern. In addition, most of these 40 commenters believed that if one or more VCCs owned or controlled a concern, the VCC should not be deemed affiliated with the concern. The justification offered was that VCC investment is crucial to startups in the biotech industry and that SBIR funds are needed to reduce the private risk of these investments. The remaining 20 commenters, however, were opposed to any proposal that would allow a concern to participate in the SBIR Program if one or more VCCs have majority ownership or control of the concern. These commenters expressed their concern that because VCC firms often represent and are established by large corporate interests, allowing their subsidiaries to receive SBIR awards could result in SBIR funds, which are reserved for small business concerns, being used to subsidize research projects of large corporations.

The relationship of a VCC or other investment vehicle to an SBIR participant is a broader policy question than SBA sought to address with the June 4, 2003, proposed rule. Under current regulations (§ 121.103, "What is affiliation?"), when VCCs have control of a firm in which they invest, they are considered affiliated with that firm, just

as any other business entity would be if it had ownership or control.

SBA's Small Business Size Regulations in 13 CFR 121.103 provide a small number of exclusions from affiliation. Concerns owned in whole or substantial part by Small Business Investment Companies (SBICs) or development companies licensed under the Small Business Investment Act are not considered affiliated with the SBIC or development company. Also, concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations, Native Hawaiian Organizations and Community Development Corporations are not considered affiliates of these entities solely because of their common ownership and common management. Further, the regulation excludes VCCs, as defined in U.S. Department of Labor regulations (29 CFR 2510.3–101(d)), from affiliation with concerns receiving assistance under the Small Business Investment Act. (The SBIR Program is established under the Small Business Innovation Development Act, not under the Small Business Investment Act.)

SBA believes that determining whether VCCs should be excluded from affiliation under § 121.103, assuming the small business concern meets the ownership and control criteria established by the SBA, requires a separate rulemaking action, affording the public an opportunity to comment directly on SBA's proposal. Although SBA's June 4, 2003, proposed rule did not address this issue, substantial public interest has persuaded SBA to seek additional comments directly on this question. SBA has not determined at this time if it will propose to exclude VCCs from affiliation or to provide some other type of exemption for VCC investments, but is seeking public comment on whether it should propose such a change to its affiliation rule.

SBA requests comments on the issue of whether it should propose a change to the size affiliation regulation for SBIR Program purposes by allowing business concerns that are majority owned or controlled by one or more VCCs to be eligible for SBIR awards, regardless of the ownership and control of the VCCs. SBA is seeking information on how such a change is likely to impact the program and its participants, and how such a change could be implemented while at the same time ensuring that the SBIR Program remains a program that benefits small business entrepreneurs.

Specific issues that SBA is seeking information on include the following:

1. The role of VCC financing on SBIR projects during Phases I and II.

2. The impact of such a change in eligibility requirements on the composition of SBIR participants. For example, would the program shift towards lower-risk technologies closer to market, or become more geographically concentrated following industries and areas of venture capital focus?

3. The types of firms and projects that would benefit most from such a change, and those that would benefit the least.

4. Whether an exclusion from affiliation for VCCs would require justifying limiting the exclusion to VCCs and not including other entities such as not-for-profit organizations.

5. Whether or not granting VCC exclusion from affiliation would adversely affect the ability of small business concerns without such access to private capital to compete for SBIR awards.

6. Whether the participation of firms owned and controlled by VCC firms would ultimately create an environment of multiple repeat award winners.

7. Alternative approaches that may assist small business concerns in obtaining and utilizing VCC funding while participating in the SBIR Program, aside from a policy that requires an exclusion from affiliation for VCC majority-owned small business concerns.

If SBA ultimately determines that it is necessary to develop a proposed rule on this issue, then it will perform an analysis mandated by the Regulatory Flexibility Act (RFA). As part of an RFA analysis, SBA must determine whether the rule will have a significant economic impact on a substantial number of small entities. The RFA defines small entities as small business concerns, small not-for profit organizations, and small governmental jurisdictions. Thus, SBA is seeking comments to determine the number and type of small entities that would be affected by a rule that would provide an exclusion from affiliation for VCC companies in size determinations for eligibility for the SBIR Program. In addition, SBA is seeking comments on the number of small business concerns competing for SBIR awards that have received venture capital funding and the number of VCC majority-owned small business concerns that potentially may be interested in participating in the SBIR Program.

As part of an RFA analysis, SBA must also determine whether the rule will have a significant economic impact on these small entities. To make this determination, agencies seek information about the percentage of revenues or profits affected by the rule.

Therefore, SBA is also seeking comments on the costs to small entities if SBA implements a rule that would provide an exclusion from affiliation for VCC companies in size determinations for eligibility for the SBIR Program. Such costs include implementation costs and the effect the rule would have on profits or revenues, *i.e.*, whether it would it reduce profits or raise or lower revenues.

Comments on any other aspect of the SBIR Program that might directly affect whether or not SBA should propose excluding VCCs from affiliation for purposes of the SBIR Program are also welcome.

Dated: September 15, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04-26609 Filed 12-2-04; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2004-19795; Directorate Identifier 2004-NM-196-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777-200 and -300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777-200 and -300 series airplanes. This proposed AD would require replacing the existing halogen lamps in the cargo compartment light assemblies with new incandescent lamps, and installing warning and identification placards. This proposed AD is prompted by a report of an aft cargo fire during flight. We are proposing this AD to prevent a fire in the cargo compartment.

DATES: We must receive comments on this proposed AD by January 18, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL-401, Washington, DC 20590.

- By fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA-2004-19795; the directorate identifier for this docket is 2004-NM-196-AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Clint Jones, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6471; fax (425) 917-6590.

Plain language information: Marcia Walters, marcia.walters@faa.gov.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA-2004-99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004-NM-999-AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2004-19795; Directorate Identifier 2004-NM-196-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.